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MISCELLANEOUS DOCUMENTS

Los Angeles County Sheriff's Department Employee Training Records for Deputy Armando Hernandez Jr.

Los Angeles County Sheriff's Department Employee Training Records for Deputy Carlos Levario Jr.

County of Los Angeles Sheriff's Department Supplemental Report written by Deputy Raul Zuniga

Superior Court of California, County of Los Angeles Commitment form for Agustin Hernandez

Los Angeles County Unified Arrestee Medical Screening Form for Agustin Hernandez

Administrative Rights Force/Shooting Investigation form for Deputy Armando Hernandez Jr.

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Administrative Rights Force/Shooting Investigation form for Deputy Raul Zuniga

Administrative Rights Force/Shooting Investigation form for Deputy Erik O. Sibrian

Time Copy of Century Station PM Shift In-Service dated Sunday, April 13, 2014

Copy of Century Station AM Shift In-Service dated Sunday, April 13, 2014



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

February 24, 2015

Captain Rod Kusch
Los Angeles County Sherriff's Department
Homicide Bureau
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File #14-0238
L.A.S.D. File #014-05668-2112-051

Dear Captain Kusch:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 13, 2014, non-fatal shooting of Agustin Hernandez by Los Angeles County Sherriff's Department (LASD) Deputies Armando Hernandez and Carlos Levario. It is our conclusion that the deputies acted in lawful defense of others at the time they fired their weapons.

The District Attorney's Command Center was notified of this shooting on April 13, 2014, at approximately 5:00 p.m. The District Attorney Response Team, comprised of Deputy District Attorney Rosa Alarcon and District Attorney Senior Investigator [redacted] responded and was given a briefing and walk-through of the scene by LASD Lieutenant Dave Dolson.

The following analysis is based on reports submitted to our office by the LASD, Homicide Bureau. No compelled statements, if any exist, were considered in this analysis.

FACTUAL ANALYSIS

On April 13, 2014, Deputy Hernandez responded to [redacted] Martin Luther King Boulevard in the City of Lynwood regarding a man with a gun.[1] The call indicated that the suspect, Agustin Hernandez, was threatening individuals at the location with a gun. Hernandez coordinated assisting units, including Deputy Levario, to respond to the location via radio and parked his car east of the location at Martin Luther King Boulevard and California Avenue.

Upon arrival, Hernandez was advised by an LASD Helicopter Unit that Agustin was located in the courtyard at the end of the driveway. Hernandez walked southbound down the driveway towards the end of the driveway. Hernandez took cover behind a parked vehicle and observed

[1] The location is a four unit apartment complex with a common courtyard and driveway.

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Agustin arguing with another male, [redacted] was standing in the courtyard a few feet in front of Agustin with his hands in the air. Agustin was holding a handgun down at his side.[2]

Other deputies on scene shouted at Agustin in English and Spanish to drop the gun and get down on the ground. Hernandez saw Agustin turn his head towards the deputies. Since [redacted] was in close proximity to Agustin, Hernandez feared that Agustin would shoot [redacted] or that [redacted] might be struck by gunfire from the deputies, should they fire their weapons. Hernandez gave a command to Agustin in Spanish to drop the gun. Agustin did not comply.

Agustin raised the barrel of the gun to his waist with his elbow bent so that the gun was pointed at [redacted] Agustin then turned to his right towards the deputies who were positioned in the driveway, while still holding the gun at his waist with the barrel pointed forward. Fearing that Agustin would shoot his weapon, Hernandez and Levario, who made the same observations from a nearby location, fired their weapons at Agustin.[3] Agustin fell to the ground and dropped his gun, a "Colt" 1911-style .45 caliber handgun, which was later determined to be unloaded. Agustin was transported to St. Francis Medical Center where he was treated for two gunshot wounds to his left leg.[4]

CONCLUSION

According to the law in California, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury and (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger. If the person's beliefs were reasonable, the danger does not need to have actually existed. CALCRIM No. 505.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight…The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about

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[2] Additional investigation revealed that [redacted] lived at the location. Earlier that afternoon, he had exited his residence into the central courtyard to cheer for his favorite soccer team along with his neighbor, [redacted] Agustin also [redacted] at the location and was outside at that time. Agustin approached the two men and told [redacted] that he was tired of [redacted] talking about him and making fun of him. Agustin produced a handgun from his waistband and threatened to kill [redacted] Agustin challenged [redacted] to fight and struck him with the firearm in his abdominal area. During the confrontation, [redacted] physically pulled Agustin away from [redacted] allowing [redacted] an opportunity to call 9-1-1 from his cell phone. Another [redacted] came outside to intervene. Agustin pointed the gun at him and threatened to kill him as well.

[3] Levario stated that he fired his weapon at Agustin fearing for the safety of [redacted] Hernandez stated that he fired his weapon fearing for the safety of the deputies.

[4] On April 23, 2014, the Los Angeles County District's Attorney's Office filed a criminal complaint against Agustin in case number TA133004, alleging two counts of assault with a deadly weapon, in violation of Penal Code section 245(a)(2), and two counts of criminal threats, in violation of Penal Code section 422. The named victims were [redacted] and [redacted] On August 14, 2014, Agustin plead no contest to one count of Penal Code section 245(a) (2) and was sentenced to six years in state prison.

the amount of force that is necessary in a particular situation." Graham v. Conner (1989) 490 U.S. 386, 396-397.

The evidence examined in this investigation shows that LASD deputies observed Agustin involved in a verbal argument with [redacted] while holding a gun in his hand. [redacted] had his hands up in the air so it was clear that Agustin was the aggressor. Agustin refused to comply with the deputies' orders to drop the gun and get down on the ground. Instead, Agustin raised the gun and pointed it at [redacted] placing the deputies in reasonable fear for [redacted] safety. When Agustin turned toward the deputies with the gun pointed in their direction, Hernandez and Levario responded to this deadly threat by firing their weapons and ending the threat.

Based on the foregoing, we conclude that Deputies Armando Hernandez and Carlos Levario were placed in reasonable fear of imminent danger of death or great bodily injury to their fellow deputies, as well as [redacted] and acted lawfully in defense of others when they used deadly force against Agustin. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By [signature]

ROSA ALARCON
Deputy District Attorney
(213) 974-3888

c: Deputy Armando Hernandez, #[redacted]
Detective Carlos Levario, #[redacted]